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Attorneys for Plaintiff  
McKESSON CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

McKESSON CORPORATION, a Delaware  
corporation,

Plaintiff,

v.

FAMILYMEDS GROUP, INC.,  
f/k/a Drugmax, Inc., a Connecticut corporation,

Defendant.

FAMILYMEDS GROUP, INC.,  
f/k/a Drugmax, Inc., a Connecticut corporation,

Counterclaimant,

v.

McKESSON CORPORATION, a Delaware  
corporation,

Counterdefendant.

FAMILYMEDS, INC.,  
a Connecticut corporation,

Cross-Complainant,

v.

McKESSON CORPORATION, a Delaware  
corporation,

Cross-Defendant.

Case No.4:07-cv-05715 WDB

**DECLARATION OF ROBERT C.  
MARDIAN III IN SUPPORT OF  
NOTICE OF WITHDRAWAL AND  
WITHDRAWAL OF MOTION TO  
DISMISS FILED AUGUST 19, 2008**

Complaint Filed: November 9, 2007

Cross-Complaint Filed: December 17, 2007

1 I, ROBERT C. MARDIAN III, declare that I have personal knowledge of the following  
2 facts and, if called upon to do so, I could and would testify competently thereto:

3 1. I am an attorney with the law firm of Henderson & Caverly LLP, counsel to  
4 McKESSON CORPORATION ("McKESSON") and D&K HEALTHCARE RESOURCES LLC  
5 ("D&K"). McKesson is the plaintiff in this action. D&K is a defendant in a related action.

6 2. I am providing this Declaration to explain the administrative error on the part of  
7 Henderson & Caverly LLP that occurred while using the ECF website to file the McKesson's and  
8 D&K's notice of motion, motion and points in authorities which comprised the "MOTION TO  
9 DISMISS COMPLAINT PURSUANT TO FRCP RULES 12(b)(1) AND 12(b)(6)" (the "Motion").

10 3. McKesson and FAMILYMEDS GROUP, INC., are parties to two actions currently  
11 pending before the Honorable Wayne D. Brazil, Magistrate Judge for the United States District  
12 Court in the Northern District of California (the "Court"). The two actions are:

13 **McKesson Corporation v. Familymeds Group, Inc.**  
14 **4:07-cv-05715-WDB, filed November 9, 2007 (the "First Action"); and**

15 **Familymeds, Inc. et al. v. McKesson Corporation et al.**  
16 **4:08-cv-02850-WDB, filed June 6, 2008 (the "Second Action").**

17 4. Henderson & Caverly LLP represents McKesson in both actions.

18 5. By August 19, 2008, McKesson and D&K were obliged to file a responsive  
19 pleading to the complaint in the Second Action filed by FAMILYMEDS GROUP, INC., and  
20 FAMILYMEDS, INC. (collectively as "Familymeds"). In accordance with that deadline,  
21 Henderson & Caverly LLP prepared and served the Motion upon Familymeds on August 19, 2008.

22 6. The Motion as prepared contained the proper caption, including the proper case  
23 number and hearing time.

24 7. On August 19, 2008, our administrative assistant accessed the ECF website for the  
25 purpose of filing the Motion with the Court. In entering the case number into the ECF system, our  
26 assistant inadvertently entered the case number corresponding to the First Action instead of the  
27 case number corresponding to the Second Action as was required. Consequently, the Motion was  
28 filed timely with the Court, but routed to the incorrect electronic docket because of the inadvertent

1 data entry error by our administrative assistant. Instead of appearing on the electronic docket for  
2 the Second Action as was proper, the Motion appeared on the electronic docket of the First Action.  
3 Neither I nor anyone at Henderson & Caverly LLP were aware of this filing error until August 20,  
4 2008.

5 8. On or around 9:30 a.m. on August 20, 2008, via PACER, I accessed the electronic  
6 docket for the First Action to investigate filings related to that action. I was surprised to see the  
7 Motion filed on the docket for the First Action as item #83 since I knew the Motion belonged to the  
8 Second Action. I then accessed the electronic docket from the Second Action and learned that the  
9 Motion did not appear on that docket.

10 9. After learning of the error, I promptly called Judge Brazil's Docket Clerk, Cindy  
11 Lenahan, to notify her of the error. I also requested my assistant to refile the Motion on the ECF  
12 under the proper case number and observed him accomplish that task. Later that morning, I spoke  
13 to Ms. Lenahan who confirmed that the ECF system had accepted the filing and routed it to the  
14 proper docket.

15 10. On information and belief, and after checking the current docket of the Court in this  
16 action on PACER, I assert that as of the time of this declaration, no opposition to the Motion to the  
17 motion has been filed. Even if an opposition has been filed without my knowledge, McKesson is  
18 within the seven (7) day window within which to withdraw its motion under Civil L.R. 7-7(e).

19 11. McKesson and D&K intend to keep the Motion on calendar as it relates to case no.  
20 4:08-cv-02850-WDB.

21  
22 I declare under penalty of perjury under the laws of the United States of America that the  
23 foregoing is true and correct.

24 Executed this 20th day of August, 2008, in Rancho Santa Fe, California.

25  
26  
27 By:   
28

Robert C. Mardian III